

Christopher S. Yates  
Direct Dial: (415) 395-8257  
Chris.Yates@lw.com

505 Montgomery Street, Suite 2000  
San Francisco, California 94111-6538  
Tel: +1.415.391.0600 Fax: +1.415.395.8095  
www.lw.com

## LATHAM & WATKINS LLP

### VIA ECF

March 9, 2023

The Honorable Brian M. Cogan  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

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Re: North American Soccer League, LLC v.  
United States Soccer Federation, Inc., Case No. 1:17-cv-05495

Dear Judge Cogan:

We write on behalf of Defendants United States Soccer Federation (“U.S. Soccer”) in response to the notice of supplemental authority filed by Plaintiff North American Soccer League (“NASL”).

NASL’s “overarching conspiracy” claim (Count II) was previously before the Second Circuit in *NASL II*, 883 F.3d 32 (2d Cir. 2018). The Second Circuit’s opinion in *Relevant Sports* confirms that, with respect to NASL’s “overarching conspiracy” claim concerning U.S. Soccer’s application of the Professional League Standards (“PLS”) (Count II), NASL cannot establish concerted action by pointing to the PLS themselves. *Relevant Sports*, slip op. at 17-18; *see also* U.S. Soccer Mot. Summ. Judgment at 15-17, ECF No. 262. Rather, to establish the concerted action element of such a Section 1 claim, NASL must show that members of U.S. Soccer “reached an agreement to vote a particular way” regarding divisional sanctions. *NASL II*, 883 F.3d at 39. NASL has no evidence of any such agreement.

While NASL claims the Second Circuit’s decision in *Relevant Sports* goes directly to the question of whether it has adequately alleged concerted action in its challenge to the PLS in totality (Count I), NASL did not develop an “in totality” theory in discovery. To sustain a claim that the PLS were anticompetitive “in totality,” NASL and its experts would have needed to analyze a but-for world without the PLS in place, to show anticompetitive effects in a relevant market and damages. However, NASL’s experts never analyzed a but-for world without the PLS (or any challenged element of the PLS) in place. U.S. Soccer Mot. Summ. Judgment at 36, ECF No. 262; U.S. Soccer Reply at 10-13, ECF No. 322.<sup>1</sup> Indeed, the damages NASL seeks are based on the PLS remaining in place and are the additional fees NASL claims it would have charged expansion teams with the benefit of its preferred divisional label under the PLS. In

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<sup>1</sup> This was likely because the Second Circuit pointed out in *NASL II* that U.S. Soccer “has demonstrated procompetitive effects of the Standards.” *NASL II*, 883 F.3d at 45.

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addition to confirming that it did not develop an “in totality” claim, such claimed damages run afoul of the well-established rule that a party lacks antitrust injury when it seeks compensation for its exclusion from an allegedly anticompetitive arrangement. U.S. Soccer Mot. Summ. Judgment at 2, 42-43, ECF No. 262; U.S. Soccer Reply at 26-27, ECF No. 322.

This case is well beyond the pleadings and the *Relevant Sports* opinion has no bearing on the case that NASL chose to pursue in discovery—but failed to prove.

Respectfully Submitted,

LATHAM & WATKINS LLP

*/s/ Christopher S. Yates*

Christopher S. Yates  
Attorneys for Defendant  
*United States Soccer Federation, Inc.*